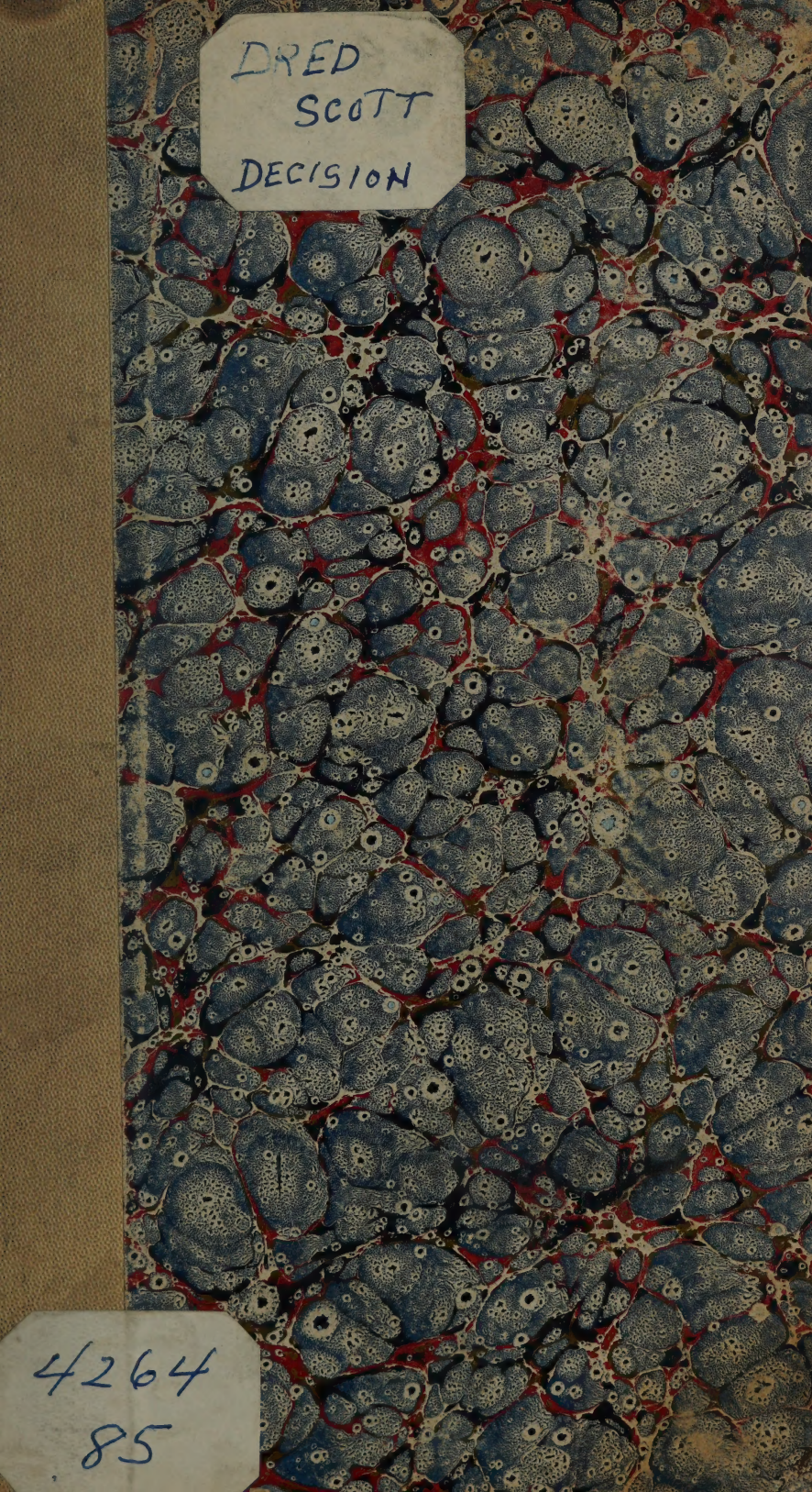
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SPEECH

OF

HENRY WALLER, ESQ.,

ON THE

DRED SCOTT DECISION,

AND

OTHER NATIONAL ISSUES

INVOLVED IN THE SENATORIAL CANVASS IN ILLINOIS.

Delivered on Friday Evening, October 22, 1858,
in Light Guard Hall, Chicago.

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Wm Everett, Esq. Aug. 7. 1867.

SPEECH.

Fellow Citizens:

I thank you for your kindly reception. This is the first occasion in my life in which I have appeared before any people to advance the interests of Democracy. I am, as many of you no doubt are aware, a Whig—what is now called an old line Whig—trained in the straightest sect of the Pharisees, born and reared almost within sight and under the shades of Ashland. I, therefore, belong to no existing political organization; nevertheless, and although no partizan, I trust my heart beats as strongly in sympathy with the right, and with as ardent a hope for the success of the great principles of constitutional liberty at issue in this struggle, as that of any man who hears me. I come not, then, before you to-night, for the purpose of waging a partizan warfare to advance partizan interests; but I come to speak to you, fellow citizens, in the spirit of a patriot, and in behalf of my country and her constitution. I come to speak in behalf of those fundamental principles of public policy which I have ever been taught by the great leaders of the Whig party to regard as absolutely vital to the union of the States, and to the safety and prosperity of this glorious republic. The measures which divided and distinguished the two old national parties have passed away — it may be never to be revived. One great question of overshadowing importance now engrosses the public mind. It is the

same question which embarrassed, agitated, and well nigh terminated the deliberations of the Convention that formed the Federal Constitution; which, in 1820, shook the national edifice to its deepest foundations; and again in 1850, threatened the peace and perpetuity of the republic, and to compose and adjust which, forced into requisition all the wisdom, patriotism, and public virtue of the great men of that day, under the leadership of the illustrious Senator of Kentucky. From that great question of slavery spring the issues now before the people of Illinois; and to those issues I shall address myself to-night.

I have been no indifferent spectator of the canvass now drawing to its close in this State. I have read with interest and care the discussions which have been held by the rival candidates for the Senate of the United States, and after surveying the whole field, believe that I shall be able to state clearly and fairly, the positions assumed and the principles maintained by them respectively. That I may do no injustice to Mr. Lincoln, I shall state the positions assumed by that gentleman in his own language. However unfortunate he may have been, and as I conceive he certainly was, in the enunciation of his general propositions, at the opening of the canvass, I cheerfully award him the benefit of all the subsequent qualifications and explanations which discussion and more mature consideration constrained him to avow. To illustrate my meaning, let me refer for a moment to his speech delivered in this city in the month of July last, in which he said:

"I should like to know, if taking this old Declaration of Independence, which declares that all men are equal upon principle, and making all exceptions to it, where will it stop? If one man says it does not mean a negro, why may not another man say it does not mean another man? If that Declaration is not the truth, let us get the statute book in which we find it, and tear it out. * * * * * * Let us discard all these things, and unite as one people throughout this land, until we shall once more stand up declaring that all men are created equal."

I confess, when I read these passages, I honestly believed that Mr. Lincoln intended to be understood as asserting, that the language of the Declaration of Independence was to be construed strictly, and without qualification; that the expression, "all men are born equal," referred to all races in all conditions, and was intended to include the negro race then in bondage in the United States. And although I will not charge him with now holding such sentiments, I certainly think Judge Douglas is justified by the language, in ascribing to him the assertion of the doctrine of "negro equality." But Mr. Lincoln has explained. In his Charleston speech, he said:

"I will say, then, that I am not, nor ever have been, in favor of bringing about, in any way, the social and political equality of the white and black races; that I am not, nor ever have been, in favor of making voters of the free negroes, or jurors, or qualifying them to hold office, or having them to marry with white people. I will say in addition, that there is a physical difference between the white and black races, which I suppose will forever forbid the two races living together upon terms of social and political equality, and inasmuch as they cannot so live, that while they do remain together, there must be the position of superior and inferior, that I, as much as any other man, am in favor of the superior position being assigned to the white man."

It is clear from this, that Mr. Lincoln believes the negro inferior to the white man in all the great departments of human rights—the social, the civil, the political. He is socially inferior, as intermarriage with the white race is forbidden him. He is inferior in civil rights, because he is not allowed to serve on juries, and by consequence is not entitled to be tried by a jury of his peers. He is inferior in political rights, because the elective franchise is denied him, and he is not allowed to hold office. Mr. Lincoln's reference then to the Declaration of Independence was unfortunate, because he does *not believe that all men are born equal*, nor that the negro race was intended to be included in that general expression in the Declaration of Independ-

ence. For I take it, that if the negro is not socially equal to the white man, nor civilly equal, nor politically equal, the Declaration of Independence can be of no advantage to him in any argument intended to vindicate or extend his rights, or draw down odium upon the institution of slavery.

Again: Mr. Lincoln, in his Springfield speech, which he stated at the time had been carefully prepared, held the following language:

"We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, the agitation has not only not ceased, but has constantly augmented. In my opinion it will not cease until a crisis shall have been reached and passed. 'A house divided against itself cannot stand.' I believe this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved—I do not expect the house to fall—but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward until it shall become alike lawful in all the States—old as well as new, North as well as South."

I took this to be the accurate and careful statement by Mr. Lincoln of the broad principle upon which he intended to discuss the slavery issue in this canvass, and to which he intended strictly to adhere in his political action hereafter. So thought Judge Douglas; who, in the discussions which ensued, pushed the proposition to what he conceived its logical and inevitable results—sectional strife and ultimate revolution.

But Mr. Lincoln explained. He stated that he was a man of peace, and did not seek or intend to provoke war; that he intended to obey the laws and proceed peaceably and within the strict limitations of the constitution; that he intended not to violate any of the rights of the States or interfere with the property of the citizen. His whole meaning and purpose was simply to bring back, by legal means, the Federal Gov-

ernment to its original, legitimate action, as initiated and sanctioned by the fathers of the republic, whereby the public mind might rest in the belief that slavery was in process of ultimate extinction!

I take him, then, upon his own explanation of his position. The question arises, what are the legal means by which Mr. Lincoln proposes to bring back the government to its original, legitimate action, whereby slavery is to be put in process of ultimate extinction? The inquiry is worthy of your most earnest consideration.

He shall answer in his own language. In his speech at Ottawa, he said:

"In that Springfield speech, my main object was * * * to arouse this country to the belief that there was a tendency, if not a conspiracy, to make slavery perpetual and universal in this Union."

The first step, then, is *agitation.*

In his Freeport speech, in reply to the pressing interrogatory of Judge Douglas, as to whether he would be willing to admit a new State with a slave constitution, he said:

"I state to you freely, frankly, that I should be exceedingly sorry to be ever put in the position of having to pass upon that question.

"I should be exceedingly glad to know that there never would be another slave State admitted into the Union; but I must add in regard to this, that if slavery shall be kept out of the territory, during the territorial existence of any one given territory, and then the people should, having a fair chance and clear field when they come to adopt a constitution, if they should do the extraordinary thing of adopting a slave constitution, uninfluenced by the actual presence of the institution among them, I see no alternative, if we own the country, but we must admit it into the Union."

I think this language too plain to admit any doubt as to its meaning. Mr. Lincoln states the single condition on which he would be willing to vote for the admission of a new slave State. If slavery shall be kept out of a territory during its territorial existence, so that the people should have a clear field, uninfluenced by the presence of the institution, and

should then do the extraordinary thing of adopting a slave constitution, I understand him to say that he would then be constrained, though very reluctantly, to admit the new State.

Now, according to the law of the land, as expounded by the Supreme Court of the United States, the prohibition of slavery would be unconstitutional, and is therefore impossible. Slavery, then, cannot be kept by law out of a territory during its territorial existence, and Mr. Lincoln's condition cannot be fulfilled. Upon his own statement, then, he is opposed to the admission of any new slave State.

This view of his position is made conclusive by the fact that he has refused to answer the following questions, repeatedly put to him by Judge Douglas, with great significance and emphasis—as the Judge always puts questions. Would you, Mr. Lincoln, if elected to the Senate, feel it your duty, under your oath as Senator, to respect the stipulations of the treaty with Texas so far as to vote for the admission of a new slave State, carved out of her territory, upon a proper application, with a constitution republican in form? Would you, sir, so far respect the provisions of the compromise of 1850 with reference to Utah and New Mexico, as to admit either, applying with a slave constitution? Mr. Lincoln is silent as the grave. He is silent because he is convicted. He is unequivocally committed against the admission of any new slave State within the circle of the sovereign States of the Union, and stands ready to oppose the pronounced and undoubted will of the people. This is another one of the measures by which Mr. Lincoln proposes to enable the public mind to "rest in the belief that slavery is in process of ultimate extinction."

In his speech at Chicago, he discloses the last in his series of practical measures. He said, in speaking of the Dred Scott decision—

"Somebody has to reverse that decision, since it is made, and we mean to reverse it. If I were in Congress, and a question should come up on a question whether slavery should be prohibited in a new territory, in spite of that Dred Scott decision I would vote that it should."

In his speech at Quincy, he developed more fully his views on this subject. He said—

"We oppose the Dred Scott decision in a certain way. * * * * We do not propose that when Dred Scott is decided to be a slave, we will raise a mob to make him free. We do not propose that when any one, or one thousand, or any number of men in his condition, shall be decided by in a like manner, that we will disturb that decision; but we do oppose it as a political rule that shall be binding upon the man when he goes to the polls to vote, or upon the member of Congress, or upon the President, to favor no measure that does not actually tally with the principle of that decision. We do not propose to be bound by it as a political rule in that way. We propose, because we think that it lays the foundation, not merely of enlarging and spreading that evil, but that it lays the foundation of spreading that evil into the States themselves. We propose to have that decision reversed and to have a new, true judicial decision spread upon the records of the country."

This, then, is his chart of the slavery crusade—to arouse and alarm the public mind by charging a conspiracy to perpetuate and render slavery universal; to resist the admission of any additional slave States; and to disregard and reverse the decision of the Supreme Court, with a view of prohibiting slavery in all the territories of the United States.

Mr. Lincoln is said to have been a Whig; and since he professes still to act upon Whig principles, and has invoked the authority of the great leader to his support, and since he appeals to the Whigs directly and through all his organs in the State to rally around him in this great struggle, I shall test this scheme of his by the old and accepted standards of the Whig faith, and see whether he is entitled to the support of the old Whigs who still remain faithful to their principles, as expounded by the recognized leaders of the party. If by virtue of my allegiance to Whig principles, it can be made to appear that I should become a slavery agitator, alarming the public mind by tales of conspiracy; that I am bound to oppose the admission of any slave States into the Union, and that I have a right to disregard and trample under foot the

decisions of the great tribunal of last resort, then have I ever and utterly misread the doctrines of my party, and the lessons of its great teachers.

It has always been my pride to believe that the Whig party embraced a large proportion of the conservative men of this country, and that the great idea, around which were clustered all its distinctive principles, was the preservation, in their original integrity, of the existing institutions by which conflicting interests had been harmonized, and the separate sovereignties consolidated into one grand republic. As a consequence, the Whig party has ever been opposed to the agitation of any question which tended to array one section against another, or disturb the foundations of private property or vested rights. And of all the forms and subjects of agitation, the agitation of slavery has ever been regarded by the Whig party as the most fearful.

What has been the practice of the government, what the views of its founders, and what the doctrines of the Whig party as to the admission of new States? Have they been against the admission of slave States? At the formation of the constitution, twelve slave States entered the Union; six of these have since become free States; nine new slave States have been admitted. Can Mr. Lincoln point to a single instance where admission has been refused? Not one. And yet he professes only to seek to bring the government back to its ancient practice!

But it is claimed that the early policy of the country was to prohibit slavery from the Territories. Let us see. The principle, it is true, was applied by Virginia to her northwestern territory, in her deed of cession, and incorporated into the ordinance of 1787. But has Mr. Lincoln forgotten that the territories ceded by North Carolina and Georgia did not contain a prohibition, and that they subsequently were admitted as slave States? Does he forget that the Territories of Louisiana, and Florida, and Texas, all came in as slave territories? Can it be contended, then, that the principle of prohibition was adopted by the fathers of the repub-

lic, as the rule applicable to all the territories? If not, how is it he claims to prohibit slavery upon the ground that it is in accordance with the established practice of the government in its earlier history?

The admission of new States involves the doctrine of popular sovereignty. Mr. Lincoln professes to be in favor of that doctrine, and yet he is against its exercise at the very time when a territorial people, having assembled in convention and constructed their organic law, apply for admission into the Union. He seeks to strip them of the great right of regulating their domestic institutions in their own way, at the precise time when, under the Federal Constitution, they are about to be inaugurated as a sovereign State.

What said Mr. Clay in 1850? He brought in the compromise measures, including bills for Utah and New Mexico, with a clause providing for their admission as States, at the proper time, with or without slavery, as the people might determine, and said, in commenting on the bill for New Mexico:

"The bill has left the field open for *both*, to be occupied by slavery if the people, when they are forming States, shall so decide, or to be exclusively devoted to freedom, if, as is probable, they shall so determine."

That was the principle engrafted into the organic law of these territories by the great hand of Henry Clay himself, and which must live amongst the glorious legacies he has left to the nation. Yet Mr. Lincoln asks Whig support on the ground that he is maintaining the Whig faith!

Is it possible, that any man who has read the history of his country, who has watched the operations of the federal government, who has considered well the symmetry of the structure, and knows the foundations upon which it rests, and the concessions, compromises, and sympathies by which its materials were brought and welded together—is it possible, I say, that any man so informed, with the lights of the past and the signs of the present times around him, can believe that this Union will survive, for one hour, the practical application of the principle announced by Mr. Lincoln—the rejection of a

new State upon the sectional ground alone, that the constitution she presents recognizes slavery as one of her institutions? I know that "fools rush in where angels dare not tread;" I have learned to make allowances for all the mad delusions of ignorance, fanaticism and folly; but I cannot understand how a man, occupying the position of Mr. Lincoln, and professing to be a conservative and a Whig, can doubt the deplorable results of the policy he professes.

But he stops not here. He announces he will not abide the decision of the Supreme Court; that although that tribunal has declared the Missouri Compromise law of 1820 unconstitutional and void, he will vote, if elected to the Senate, to re-enact its principles. He denounces the decision in the Dred Scott case as of no obligatory force, as an interpretation of the Constitution, upon the citizen, the legislator, or the Executive of the United States. He denounces it because it is unsound in principle, and tending to spread slavery in the States.

I differ with Mr. Lincoln as to the obligation of a decision of the Supreme Court, and I differ with him upon Whig grounds. The theory of the Constitution, taught by its great expounders in the Whig party, was, that it is a system of checks and balances, based upon the distribution of its great powers into three co-ordinate and independent departments—legislative, executive and judicial. That a law enacted by Congress, approved and carried into execution by the President, was to be finally tested as to its application and validity by the people upon whom it operated, at the bar of the Supreme Court. That a final arbiter of the laws, whether statutory or organic, was an inherent necessity in the very idea of government. That without a tribunal of last resort, the federal instrument could not be a *constitution*, but would be a mere compact, with treaty stipulations, between separate sovereignties, incapable of authoritative execution in cases of disagreement and difficulty. That such an arbiter of the laws had been created in the Constitution, by granting the judicial authority to one Supreme Court, and extending its

power to "all cases arising under the Constitution and laws of the United States." That a decision of that court involving a law of Congress, and the Constitution, was not only final as to the merits of the particular case, but that its interpretation of both statute and constitution was *the law of the land*, authoritative and imperative upon every citizen of the republic, and upon all the departments of the government, superior and subordinate, State and federal, legislative, executive and judicial. Imperative, not upon the free operation of their minds and consciences as men, but upon their civil, political and official action as citizens and officers. That any other theory of government was inconsistent with the spirit of law itself, and would sap the very foundations of public order. Human law is not intended to control the conscience, but the action of the citizen. Admitting the fullest latitude of inquiry and discussion, in the formation of the organic law, the Whig party have ever held that every citizen was conclusively bound by that law, *as made*, whether his own individual opinions approved or disapproved it. His condition of citizenship forbade any appeal to the forum of conscience. Hence the utter heresy of the "higher law" doctrine. If, then, the Constitution is imperative, as I have explained, so must its interpretation be, when authoritatively rendered by the final arbiter which the Constitution itself has erected.

If this is not the true doctrine, then the result follows that the Constitution is to be obeyed only as the citizen or officer may himself interpret it. Let us look at the practical consequences. A law of Congress is passed, embracing various subjects of wide application. The Executive has approved it, the Supreme Court has expounded it. That decision may declare one provision of the law valid, another void. The interpretation given by the President to the valid provision may not allow the same latitude of application which Congress intended. There is then a difference of opinion between all the departments of the government. That diversity of opinion may exist in reference to the same law in all the infe-

rior Federal and the State judicatures; it may run through all the high and all the subordinate federal and State ministerial offices, and Congress and the State Legislatures may also disagree. If Mr. Lincoln's doctrine is to prevail, and each citizen is to obey the law, and each officer to enforce it as he understands that law and the Constitution, then there can be no uniformity in the legislation of the country, in the execution of the laws, or the administration of justice. There can be no harmony in the federal system, no peace in the Republic; all will be confusion, disorder and discord. No, no, fellow citizens, the doctrine of Mr. Lincoln is impracticable in our system of government, is radical in its tendencies, and must be revolutionary in its results.

Hear what the great expounder of the Constitution teaches. In his speech in the Senate on the 13th February, 1833, speaking of the grant of power in the constitution to the Judiciary, Mr. Webster said:

"No language could provide with more effect and precision than is here done, for subjecting constitutional questions to the ultimate decision of the Supreme Court. This is exactly what the convention found it necessary to provide for, and intended to provide for. It is, too, exactly what the people were universally told was done when they adopted the constitution. One of the first resolutions adopted by the convention was in these words, viz., 'That the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, *and questions which involve the national peace and harmony*.' Now, sir, this either had no sensible meaning at all, or else it meant that the jurisdiction of the national judiciary should extend to these questions *with a paramount authority*."

Again, in his great speech on Foote's resolution, speaking of the provisions relating to the judicial power, he said:

"These two provisions cover the whole ground. They are, in truth, the key-stone of the arch! With these it is a government; without them it is a confederation. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing *all questions of constitutional power to the final decision of the Supreme Court*."

Again, in his speech on the judiciary, he said:

"I look upon the judicial department of this government as its main support. I am persuaded that the Union could not exist without it. I shall oppose whatever I think calculated to *disturb the fabric of government, to unsettle what is settled, or to shake the faith of honest men in the stability of the laws, or the purity of their administration.*"

I commend these last sentences to Mr. Lincoln's especial consideration. The great Whig statesman seemed to have in his contemplation some such agitation as that now attempted by Mr. Lincoln. *He* proposes to "shake the faith of honest men in the stability of the laws, and the purity of their administration," by charging a conspiracy between the Federal Executive, the Supreme Court, and other high officers of government. He attempts "to unsettle what is settled," by reversing the decision of the Supreme Court in the Dred Scott case. And he seeks "to disturb the fabric of government" in refusing to be bound by that decision as a citizen or legislator.

How does Mr. Lincoln propose to reverse that decision? He looks to popular agitation, and to Congressional action. He tells us he will first arouse the people to a belief of a conspiracy to make slavery perpetual and universal. He says, if elected to the Senate, he will vote to re-enact the principle of the territorial prohibition of slavery just decided by the Supreme Court to be unconstitutional. To render his action effectual, he must agitate and agitate and agitate, till he shall have carried a majority in both branches of Congress, pledged to legislate in opposition to the ruling of the Supreme Court. He must also elect a President pledged to the same policy. Having thus carried his principles and his party into power, he is prepared to legislate. "Somebody has to reverse that decision," he exclaims, "*and we mean to reverse it.*" The law is passed and approved, by which slavery is prohibited in the territories. The Supreme Court must be either overawed into submission before this storm of popular agitation, congressional action, and executive intimidation, and consent

to reverse its own solemn decision; or the bench is to be filled, as vacancies occur by resignation, impeachment, or death, with men pledged to carry out the behests of a triumphant political party for partisan and sectional purposes! By one mode or the other, it matters not which, the temple of justice is to be invaded by the Vandals of party, and all of independence, and purity, integrity and truth, embodied and consecrated by the fathers of the republic, in this loftiest tribunal on earth, is to be cloven down by the reeking sword of the fanatic!

This is the plan; sanctioned is it by the doctrines of the Whig party? Do you believe it, fellow-citizens? Is there a man who has ever read the immortal teachings of Webster or Clay who can believe it? This is the notable scheme by which the government is to be brought back to its earlier purity, and to the practice of its founders, so that the public mind may be brought "to rest in the belief that slavery is in the course of ultimate extinction!"

Listen, for a moment, to what Mr. Clay said in the Senate, in 1839, with almost prophetic wisdom it seems, on this very subject:

"I am, Mr. President, no friend of slavery. The searcher of all hearts knows that every pulsation of mine beats high and strong in the cause of civil liberty. Whenever it is safe and practicable, I desire to see every portion of the human family in the enjoyment of it. But I prefer the liberty of my own country to that of any other people; and the liberty of my own race to that of any other race. The liberty of the descendants of Africa in the United States is incompatible with the safety and liberty of the European descendants. Their slavery forms an exception—an exception resulting from a stern and inexorable necessity—to the general liberty in the United States. We did not originate, nor are we responsible for this necessity. Their liberty, if it were possible, could only be established by *violating the incontestible powers of the States, and subverting the Union. And beneath the ruins of the Union would be buried, sooner or later, the liberty of both races.*"

Much has been said, fellow-citizens, concerning the Dred

Scott decision, by those who either do not understand it, or choose to misrepresent it. There are those who say that the question as to the constitutionality of the Missouri Compromise was not a proper subject for judicial decision. Mr. Clay, in 1850, differed with these gentlemen. He said:

"For one, I think the object should be accomplished—to secure the power of testing, in the Supreme Court of the United States, the right under the Constitution to carry slaves into the territories."

Allow me to state, as briefly as possible, the facts in the Dred Scott case, and the questions actually involved and decided.

Dred Scott, a negro slave in Missouri, in the year 1834, was taken by his master to the military post at Rock Island, in this State, and in 1836 to Fort Snelling, in the then territory of Upper Louisiana. Harriet, also a slave, was taken by her master to the last named fort, in 1835; where, in 1836, she was married to Dred Scott. In 1838, they were taken back to Missouri, where they resided as slaves till the institution of their suit for freedom. The first suit was prosecuted in the State courts of Missouri. The inferior court decided that Dred Scott and his family were free. Upon appeal, the supreme court of Missouri reversed that decision, and pronounced them slaves under the law of that State. The case was remanded back to the inferior State court, and there permitted to rest without further action. A suit was then commenced in the circuit court of the United States for Missouri. A plea to the jurisdiction was filed, setting up that the plaintiff was not a citizen of Missouri, but a negro of African descent, whose ancestors were brought to this country and sold as slaves. Upon demurrer, the court overruled the plea, and thereby took jurisdiction of the case. Pleas in bar were thereupon filed, stating that Dred Scott was not only a negro, but a slave, and setting up the facts which I have already detailed. Issues were taken, and the case tried upon agreed facts. The court decided Dred Scott and his family to be slaves. A writ of error was prosecuted

to the Supreme Court of the United States. Now, upon this state of facts, three questions necessarily arose for the decision of that court, viz.: 1. Did the temporary residence of the slaves in a free State, or a free territory, render them free on their return into the slave State of Missouri *by the laws of that State?* If so, Dred Scott was certainly free, as he had resided for two years in the free State of Illinois. But the settlement of that question in that way would not necessarily render the wife of Dred Scott free. She had never resided in Illinois, but had lived for two years in the territory of the Upper Louisiana, north of the compromise line. In her case, therefore, it was indispensably necessary to determine another question, viz.: 2. Whether the law of 1820, prohibiting slavery in that territory was constitutional. If constitutional, then Harriet and her husband would both be free, upon the hypothesis that the law of Missouri permitted it. But, if Dred Scott and Harriet were free, it did not necessarily follow that they could sue in the courts of the United States. They could not sue unless they were citizens of Missouri, in the sense of the constitution of the United States. 3. The last question to be decided then, was, whether negroes who were free, could be citizens of a State, according to the federal constitution.

These questions were all presented distinctly in the record, and arose necessarily from the facts. They were argued at great length by the counsel on each side—the counsel for Dred Scott contending that the circuit court had taken jurisdiction rightly, that the law of 1820 was constitutional, and that by the law of the State of Missouri, upon the facts of the case, both Dred Scott and his wife were free.

There is a misapprehension in the public mind as to this question of jurisdiction, and as to the decision rendered upon it by the court. The idea is entertained by some, that when the court decided that the circuit court had no jurisdiction, it necessarily followed that the supreme court had no jurisdiction. And it is charged by the opponents of the decision, that the supreme court actually decided the case upon its

merits, after having stripped itself of jurisdiction. This is a great mistake, and does the court much injustice. The court did decide that the federal circuit court for Missouri had no jurisdiction. But, as that court did take jurisdiction, however improperly, a writ of error certainly lay to the supreme court, else the judgment of the circuit court could not be reversed, and there would be no redress. Hence, the supreme court undoubtedly had jurisdiction, and such was the decision. Having jurisdiction, the whole record and proceedings of the inferior court were necessarily before the appellate tribunal. It was therefore the duty of the revising court to correct all the material errors committed by the inferior court. That court erred both in taking jurisdiction, and in rendering judgment for the defendant on the facts of the case. The correction of the error as to jurisdiction did not deprive the appellate court of the power of examining further into the record. "On the contrary," says the court, "it is the daily practice of this court, and of all appellate courts where they reverse the judgment of an inferior court for error, to correct, by its opinions, whatever errors may appear on the record material to the case; and they have always held it to be their duty to do so, where the silence of the court might lead to misconstruction or future controversy, and the point has been relied on by either side, and argued before the court."

The supreme court accordingly took jurisdiction, and decided the three questions presented by the record; and I trust I have shown you that the decision was based upon legitimate principles of jurisdiction.

Now, what was the decision? The court decided that Dred Scott, being a negro, whether slave or free, could not be a citizen of any State, in the sense of the Constitution of the United States. Why? Because, say the court, he belongs to a degraded race, physically inferior to the dominant white race, and which did not belong to the body of sovereignty by which the Constitution was framed. They say that the expressions, "we, the people of the United States," and

"citizens," are synonymous, as used in the Constitution, and represent the sovereignty by which that instrument was adopted. That the negroes took no part, and had no lot in the adoption of the Constitution. That this was not intended to be a black republic, or a mongrel republic, but a white republic. That the clause in the Constitution giving the citizens of each State all the privileges and immunities of citizens in the several States, was never intended for the negro race. That the delegates from the slave-holding States could not have intended that any free State should have the right to make the negroes within her borders citizens, and thereby authorize them to enter the States of Virginia, South Carolina, and all the other slave States, clothed with the attributes of citizenship and sovereignty. Was the supreme court right, or was it wrong? Mr. Lincoln opposes this opinion of the court. He believes that a negro may become, by State law, a citizen of a State, in the sense of the Constitution of the United States. Yet at Charleston, in reply to the question of Judge Douglas, whether he was in favor of negro citizenship, he said:

"So far as I know, the Judge never asked me the question before, and he will have no occasion to ever ask it again, for I tell him very frankly, that *I am not in favor of it.*"

Mr. Lincoln does not want negro citizens in Illinois, and sustains, I understand, the statute which forbids the entrance of free negroes into the State. Yet he agitates to reverse a decision which denies their right to citizenship!

If he is right, and a negro can become a citizen of a State, in the sense of the Constitution, and thereby a citizen of the United States, what will he do with the law which forbids any negro to enter the State? Does not the clause—"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States"—look a little awkward? If one of the black citizens of Maine should present himself, and demand admittance into this State with this passport from the Federal Constitution in his hand, how would Mr. Lincoln meet the emergency? It is clearly a

dilemma. The negro must come in, if he be a citizen, and Mr. Lincoln says he is, yet the law of Illinois says he can not come in, and Mr. Lincoln says that is right!

The supreme court has also decided that the Missouri Compromise, prohibiting slavery north of the line therein named, is unconstitutional, and that Congress has no power to prohibit the introduction of slaves into any of the territories of the United States.

Now, I have frankly to say to you, fellow citizens, that the opinions which I entertained previous to that decision were friendly to the law of 1820. I believed it constitutional. I believed that Congress had full power over the subject, and had the right to prohibit slavery in the territories. I do not say now that the reasoning of the Supreme Court has convinced my judgment. But I do say that the interpretation of the Constitution by the Supreme Court of the United States is the law of the land. That as that court interprets the Constitution, so the Constitution is. And that I, as a citizen of the United States, am bound to obey the mandate of that, the most august tribunal on earth. I bow in obedience to the decree in this case, and will maintain its interpretation of the Constitution with all the powers nature has given me, as the law paramount throughout the length and breadth of my country.

Fellow citizens, this question as to the power of Congress to prohibit slavery in the territories was the chief point in the case, and was argued with great ability by some of the ablest legal minds of the nation. So grave and important in the view of the court were the principles involved in this question, that a re-argument was ordered. The opinion delivered, exhibits all the evidences of vast and patient research, careful analysis and profound learning. I shall not attempt even a synopsis of the argument, but content myself with stating that, the court held that the territories were acquired by the common blood and treasure of the nation, and can only be administered for the common benefit of all the citizens of the United States, regarding them as co-equal beneficiaries of

this great trust, co-equal proprietors of this vast domain, and admitting no distinctions between the citizens of the different sections of the Union in their right of settlement upon the common soil, with whatever property they possess, under the institutions of their respective States and the guarantees of the Constitution of the United States. And as slaves are recognized and protected as property in that Constitution, equally with every other species of property, and as no person can "be deprived of life, liberty or property, without due process of law," that the power of Congress cannot be a discretionary power over either person or property, nor be used to discriminate, to the exclusion of any property from any of the territories of the Union. That the territories being a part of the United States, the government and the citizen enter upon them under the authority of the Constitution, with their respective rights defined; and the government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved.

It is contended by Mr. Lincoln that the reasoning of the court would authorize the slaveholder to domicil his slaves and hold them in bondage in a free State. This is a fallacy. The argument of the court extends the Constitution as a *paramount protection* to slavery, *only* to the territories of the United States. There is, say the court, as to Congress, a total absence of the power of *prohibition*, everywhere within the dominion of the United States; *and so far*, the citizens of a territory are placed on the same footing with citizens of the States. That is, that Congress can no more *prohibit* or *establish* slavery in a territory than in a State. This is the argument; and instead of asserting that the Constitution gives the slaveholder the right to domicil his slave in a free State, it recognizes, beyond all cavil, the sovereign power of the State over the whole subject.

But the third and last point settled in the case clearly involves this very question of State power over slavery. The inquiry was as to the law of Missouri. If that law pronounced Dred Scott a slave after his return from temporary

residence in Illinois, the court said it was conclusive as to his remedy. It mattered not what might be the law of Illinois, nor what the law of Congress. The law of Missouri over its domestic institutions was supreme. So was the law of Illinois supreme over its domestic institutions. Had Dred Scott remained in Illinois, no power on earth could have made him a slave on her soil. But as he returned to Missouri, his *status*, or condition there, as to slavery, was controlled by the law of Missouri. The court refer to this point as well settled, and quote and affirm their opinion in the case of Strader *et al.* vs. Graham *et al.* Here is what the court say in that case:

"Every State has an undoubted right to determine the *status*, or domestic and social condition of the persons domiciled within its territory, except so far as the powers of the States in this respect are restrained, or duties and obligations imposed upon them by the Constitution of the United States. There is nothing in the Constitution of the United States that can in any degree control the law of Kentucky upon this subject. And the condition of the negroes, therefore, as to freedom or slavery, *after their return*, depended altogether upon the laws of that State, and could not be influenced by the laws of Ohio. It was *exclusively* in the power of Kentucky to determine for herself whether their employment in another State should, or should not, make them free on their return."

Thus, fellow citizens, we find that the Supreme Court has decided—

1. That a negro cannot be a citizen of any State, in the sense of the Constitution of the United States.

2. That Congress can pass no law prohibiting slavery in the territories; and that the Missouri Compromise law of 1820, excluding slavery from the territory acquired from France, north of a certain line, was unconstitutional.

3. That the power of the States over their domestic institutions, including slavery, is absolutely supreme.

I have shown that these questions were legitimately before the court for decision, and, consequently, that the opinion is not extra judicial, in any sense, but undoubtedly obligatory.

The power of Congress over slavery was a subject of doubt and difficulty, and its submission as a judicial question was regular and necessary. This, you have seen, was Mr. Clay's opinion. The question having been thus taken up and decided, the decision becomes the paramount law of the land, and as such should be obeyed by every good citizen. Do you suppose that Mr. Clay, if alive, would disregard that opinion? After having referred this constitutional question to the court, think you that the glorious old patriot would, after its decision, have taken the ground that Mr. Lincoln does, and as a Senator cast his vote for a law declared unconstitutional by that decision?

I turn now with pleasure, fellow citizens, to the positions assumed by your own great Senator. I understand him as differing with Mr. Lincoln on all the issues I have discussed. He deals with the subject of slavery with the wise circumspection which distinguished the fathers of the republic, and all the great national men of our own times. He leaves it where the constitution leaves it. Using the federal authority only to protect the vested rights of the citizen, and never wielding it either to extend or abolish the institution—he plants himself upon the fundamental right of every political community to determine and control its own domestic institutions in its own way. Sympathizing neither with the slavery propagandists of the South, nor the abolition fanatics of the North, he stands upon the broad conservative doctrines advocated and consecrated by the great leaders of both the old national parties. Regarding the preservation of the Union as the chief concern of the statesman, and the Supreme Court of the United States as the key-stone of the arch, he bows in obedience to its decisions, and accepts its interpretation of the constitution as the paramount law.

But, fellow-citizens, the great Senator has been placed upon his trial by the grand inquest of the nation. You are his jurors. Into your hands is his destiny committed. You are to decide whether he has been faithful to his high trust, and worthy of his great office.

The charge is, that he violated a principle of the Democratic party when he stood up in the halls of Congress to assert the rights of the people of Kansas, in opposition to Executive recommendation, and is no longer fitted to represent a free people in the councils of the nation. Is that true? I will not detain you to examine the history and principles of that struggle. You know that Judge Douglas opposed the Lecompton constitution on the ground that it had been passed by fraud upon the ballot-box, and was not the act and will of the people of Kansas. You know that he planted himself with Roman firmness upon the broad platform of popular rights, and that neither the blandishments or frowns of party friends, nor the fierce thunders of executive wrath, nor yet the honied condemnations and promises of old political foes, could win or awe him into submission, or seduce him from the integrity of his high and heroic purpose. It is an unquestioned fact, that by the exertions of Judge Douglas the Lecompton measure was defeated. I give all honor to those who were his co-laborers; for never, in my opinion, in the whole history of our legislation, was any measure so wrong in principle, ever attempted to be forced through Congress by means so unwarrantable. The Lecompton bill fell beneath the blows of Douglas. An opportunity was given fairly to ascertain the will of the people of Kansas. Their overwhelming verdict has demonstrated that he was *right*.

But it is now said, that although right in that great struggle, his motives were selfish and his professions insincere. Those who make Lecompton a test of Democracy, unite with the Republican leaders in this State in charging him with being influenced to his course last winter by the necessities of his position as a candidate for re-election to the Senate. The men who ignored the principle of the Kansas act of 1854, in their efforts to force Kansas into the Union as a slave State, now co-operate with the Republicans of Illinois, who had formerly charged that Douglas would not dare to carry out the principle of that bill when the test came. True, both have been disappointed. He was not recreant to the

principle of his Kansas bill, as one party desired, and the other had prophesied. It was natural they should coalesce in defaming the inexorable patriot. The extremists of both parties often meet upon the common ground of some radical error, or great delusion. The true American statesman looks down upon the extravagances of furious party passion, and trusts his fame to that inherent sentiment of truth, that love for the right, which dwells forever in the great conservative body of the people.

It is the fate of genius to be envied; of true greatness to be calumniated. Smaller and meaner spirits will swarm around the pathway of the statesman in his onward march to the loftiest honors of the republic. So do the prowling beasts of the night creep from fen and forest, covert and jungle, to beset and howl at the monarch of the woods. So do the meaner birds of prey hawk at and harrass the imperial eagle in his daring and upward flight towards the sun.

> "He who ascends to mountain tops shall find
> The loftiest peaks most wrapt in clouds and snow;
> He who surpasses or subdues mankind,
> *Must look down on the hate of those below;*
> Though high above the sun of glory glow,
> And far beneath the earth and ocean spread,
> 'Round him are icy rocks, and loudly blow,
> Contending tempests on his naked head,
> And thus reward the toils which to those summits led."

No, no, freemen of Illinois! citizens of Chicago! you will not desert, in this his hour of trial, him who has illustrated by his genius, and blessed by his labors, the great State of his adoption. You will rally around him to his rescue, with hand and heart and shout! Let the monument to the statesman rise! Let its broad base be laid deep in the soil of Illinois, amidst the benedictions of her people. Let its shaft rise, in classic, yet colossal proportions, with its crowning capital, to catch the morning's earliest lights—casting its mighty shadow far westward across the great father of floods as he rolls his gleaming tide through the sunny fields of the South onward to the Gulf, and in the evening time, stretching that same shadow far across the broad waters of the great

lakes, northward and eastward, even to the borders of the Atlantic—at once commemorative and symbolic of the national fame and far-reaching policy of the great Senator of Illinois.

Hon: Edward Everett

Cambridge

Mass